

*Core Principle 21 of section 5(d) of the Act:* FINANCIAL RESOURCES.—

(A) **IN GENERAL.**—The board of trade shall have adequate financial, operational, and managerial resources to discharge each responsibility of the board of trade.

(B) **DETERMINATION OF ADEQUACY.**—The financial resources of the board of trade shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the contract market to cover the operating costs of the contract market for a 1-year period, as calculated on a rolling basis.

(a) *Guidance.* [Reserved]

(b) *Acceptable Practices.* [Reserved]

*Core Principle 22 of section 5(d) of the Act:* DIVERSITY OF BOARD OF DIRECTORS.—The board of trade, if a publicly traded company, shall endeavor to recruit individuals to serve on the board of directors and the other decision-making bodies (as determined by the Commission) of the board of trade from among, and to have the composition of the bodies reflect, a broad and culturally diverse pool of qualified candidates.

(a) *Guidance.* [Reserved]

(b) *Acceptable Practices.* [Reserved]

*Core Principle 23 of section 5(d) of the Act:* SECURITIES AND EXCHANGE COMMISSION.—The board of trade shall keep any such records relating to swaps defined in section 1a(47)(A)(v) open to inspection and examination by the Securities and Exchange Commission.

(a) *Guidance.* A designated contract market should have arrangements and resources for collecting and maintaining accurate records pertaining to any swaps agreements defined in section 1a(47)(A)(v) of the Act, and should leave them open to inspection and examination for a period of five years.

(b) *Acceptable Practices.* [Reserved]

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#### APPENDIX C—DEMONSTRATION OF COMPLIANCE THAT A CONTRACT IS NOT READILY SUSCEPTIBLE TO MANIPULATION

(a) *Futures Contracts—General Information.* When a designated contract market certifies or submits for approval contract terms and conditions for a new futures contract, that submission should include the following information:

(1) A narrative describing the contract, including data and information to support the contract's terms and conditions, as set by the designated contract market. When designing a futures contract, the designated contract market should conduct market research so that the contract design meets the risk management needs of prospective users and promotes price discovery of the underlying commodity. The designated contract

market should consult with market users to obtain their views and opinions during the contract design process to ensure the contract's term and conditions reflect the underlying cash market and that the futures contract will perform the intended risk management and/or price discovery functions. A designated contract market should provide a statement indicating that it took such steps to ensure the usefulness of the submitted contract.

(2) A detailed cash market description for physical and cash-settled contracts. Such descriptions should be based on government and/or other publicly-available data whenever possible and be formulated for both the national and regional/local market relevant to the underlying commodity. For tangible commodities, the cash market descriptions for the relevant market (i.e., national and regional/local) should incorporate at least three full years of data that may include, among other factors, production, consumption, stocks, imports, exports, and prices. Each of those cash market variables should be fully defined and the data sources should be fully specified and documented to permit Commission staff to replicate the estimates of deliverable supply (defined in paragraph (b)(1)(A) of this appendix C). Whenever possible, the Commission requests that monthly or daily prices (depending on the contract) underlying the cash settlement index be submitted for the most recent three full calendar years and for as many of the current year's months for which data are available. For contracts that are cash settled to an index, the index's methodology should be provided along with supporting information showing how the index is reflective of the underlying cash market, is not readily subject to manipulation or distortion, and is based on a cash price series that is reliable, acceptable, publicly available and timely (defined in paragraphs (c)(2) and (c)(3) of this appendix C). The Commission recognizes that the data necessary for accurate and cogent cash market analyses for an underlying commodity vary with the nature of the underlying commodity. The Commission may require that the designated contract market submit a detailed report on commodity definitions and uses.

(b) *Futures Contracts Settled by Physical Delivery.* (1) For listed contracts that are settled by physical delivery, the terms and conditions of the contract should conform to the most common commercial practices and conditions in the cash market for the commodity underlying the futures contract. The terms and conditions should be designed to avoid any impediments to the delivery of the commodity so as to promote convergence between the price of the futures contract and the cash market value of the commodity at the expiration of a futures contract.

(i) Estimating Deliverable Supplies.

(A) *General definition.* The specified terms and conditions, considered as a whole, should result in a “deliverable supply” that is sufficient to ensure that the contract is not susceptible to price manipulation or distortion. In general, the term “deliverable supply” means the quantity of the commodity meeting the contract’s delivery specifications that reasonably can be expected to be readily available to short traders and salable by long traders at its market value in normal cash marketing channels at the contract’s delivery points during the specified delivery period, barring abnormal movement in interstate commerce. Typically, deliverable supply reflects the quantity of the commodity that potentially could be made available for sale on a spot basis at current prices at the contract’s delivery points. For a non-financial physical-delivery commodity contract, this estimate might represent product which is in storage at the delivery point(s) specified in the futures contract or can be moved economically into or through such points consistent with the delivery procedures set forth in the contract and which is available for sale on a spot basis within the marketing channels that normally are tributary to the delivery point(s). Furthermore, an estimate of deliverable supply would not include supply that is committed for long-term agreements (i.e., the amount of deliverable supply that would not be available to fulfill the delivery obligations arising from current trading). The size of commodity supplies that are committed to long-term agreements may be estimated by consulting with market participants. However, if the estimated deliverable supply that is committed for long-term agreements, or significant portion thereof, can be demonstrated by the designated contract market to be consistently and regularly made available to the spot market for shorts to acquire at prevailing economic values, then those “available” supplies committed for long-term contracts may be included in the designated contract market’s estimate of deliverable supply for that commodity. An adequate measure of deliverable supply would be an amount of the commodity that would meet the normal or expected range of delivery demand without causing futures prices to become distorted relative to cash market prices. Given the availability of acceptable data, deliverable supply should be estimated on a monthly basis for at least the most recent three years for which data are available. To the extent possible and that data resources permit, deliverable supply estimates should be constructed such that the data reflect, as close as possible, the market defined by the contract’s terms and conditions, and should be formulated, whenever possible, with government or publicly available data. All deliverable supply estimates should be fully defined, have all underlying assumptions ex-

plicitly stated, and have documentation of all data/information sources in order to permit estimate replication by Commission staff.

(B) *Accounting for variations in deliverable supplies.* To assure the availability of adequate deliverable supplies and acceptable levels of commercial risk management utility, contract terms and conditions should account for variations in the patterns of production, consumption and supply over a period of years of sufficient length to assess adequately the potential range of deliverable supplies. This assessment also should consider seasonality, growth, and market concentration in the production/consumption of the underlying cash commodity. Deliverable supply implications of seasonal effects are more straightforwardly delineated when deliverable supply estimates are calculated on a monthly basis and when such monthly estimates are provided for at least the most recent three years for which data resources permit. In addition, consideration should be given to the relative roles of producers, merchants, and consumers in the production, distribution, and consumption of the cash commodity and whether the underlying commodity exhibits a domestic or international export focus. Careful consideration also should be given to the quality of the cash commodity and to the movement or flow of the cash commodity in normal commercial channels and whether there exist external factors or regulatory controls that could affect the price or supply of the cash commodity.

(C) *Calculation of deliverable supplies.* Designated contract markets should derive a quantitative estimate of the deliverable supplies for the delivery period specified in the proposed contract. For commodities with seasonal supply or demand characteristics, the deliverable supply analysis should include that period when potential supplies typically are at their lowest levels. The estimate should be based on statistical data, when reasonably available, covering a period of time that is representative of the underlying commodity’s actual patterns of production, patterns of consumption, and patterns of seasonal effects (if relevant). Often, such a relevant time period should include at least three years of monthly deliverable supply estimates permitted by available data resources. Deliverable supply estimates should also exclude the amount of the commodity that would not be otherwise deliverable on the futures contract. For example, deliverable supplies should exclude quantities that at current price levels are not economically obtainable or deliverable or were previously committed for long-term agreements.

(2) Contract terms and conditions requirements for futures contracts settled by physical delivery.

(i) For physical delivery contracts, an acceptable specification of terms and conditions would include, but may not be limited to, rules that address, as appropriate, the following criteria and comply with the associated standards:

(A) *Quality Standards.* The terms and conditions of a commodity contract should describe or define all of the economically significant characteristics or attributes of the commodity underlying the contract. In particular, the quality standards should be described or defined so that such standards reflect those used in transactions in the commodity in normal cash marketing channels. Documentation establishing that the quality standards of the contract's underlying commodity comply with those accepted/established by the industry, by government regulations, and/or by relevant laws should also be submitted. For any particular commodity contract, the specific attributes that should be enumerated depend upon the individual characteristics of the underlying commodity. These may include, for example, the following items: grade, quality, purity, weight, class, origin, growth, issuer, originator, maturity window, coupon rate, source, hours of trading, etc. If the terms of the contract provide for the delivery of multiple qualities of a specific attribute of the commodity having different cash market values, then a "par" quality should be specified with price differentials applicable to the "non-par" qualities that reflect discounts or premiums commonly observed or expected to occur in the cash market for that commodity.

(B) *Delivery Points and Facilities.* Delivery point/area specifications should provide for futures delivery at a single location or at multiple locations where the underlying cash commodity is normally transacted or stored and where there exists a viable cash market(s). If multiple delivery points are specified and the value of the commodity differs between these locations, contract terms should include price differentials that reflect usual differences in value between the different delivery locations. If the price relationships among the delivery points are unstable and a designated contract market chooses to adopt fixed locational price differentials, such differentials should fall within the range of commonly observed or expected commercial price differences. In this regard, any price differentials should be supported with cash price data for the delivery location(s). The terms and conditions of the contracts also should specify, as appropriate, any conditions the delivery facilities and/or delivery facility operators should meet in order to be eligible for delivery. Specification of any requirements for delivery facilities also should consider the extent to which ownership of such facilities is concentrated and whether the level of con-

centration would be susceptible to manipulation of the futures contract's prices. Commodity contracts also should specify appropriately detailed delivery procedures that describe the responsibilities of deliverers, receivers and any required third parties in carrying out the delivery process. Such responsibilities could include allocation between buyer and seller of all associated costs such as load-out, document preparation, sampling, grading, weighing, storage, taxes, duties, fees, drayage, stevedoring, demurrage, dispatch, etc. Required accreditation for third-parties also should be detailed. These procedures should seek to minimize or eliminate any impediments to making or taking delivery by both deliverers and takers of delivery to help ensure convergence of cash and futures at the expiration of a futures delivery month.

(C) *Delivery Period and Last Trading Day.* An acceptable specification of the delivery period would allow for sufficient time for deliverers to acquire the deliverable commodity and make it available for delivery, considering any restrictions or requirements imposed by the designated contract market. Specification of the last trading day for expiring contracts should consider whether adequate time remains after the last trading day to allow for delivery on the contract.

(D) *Contract Size and Trading Unit.* An acceptable specification of the delivery unit and/or trading unit would be a contract size that is consistent with customary transactions, transportation or storage amounts in the cash market (e.g., the contract size may be reflective of the amount of the commodity that represents a pipeline, truckload or railcar shipment). For purposes of increasing market liquidity, a designated contract market may elect to specify a contract size that is smaller than the typical commercial transaction size, storage unit or transportation size. In such cases, the commodity contract should include procedures that allow futures traders to easily take or make delivery on such a contract with a smaller size, or, alternatively, the designated contract market may adopt special provisions requiring that delivery be made only in multiple contracts to accommodate reselling the commodity in the cash market. If the latter provision is adopted, contract terms should be adopted to minimize the potential for default in the delivery process by ensuring that all contracts remaining open at the close of trading in expiring delivery months can be combined to meet the required delivery unit size. Generally, contract sizes and trading units should be determined after a careful analysis of relevant cash market trading practices, conditions and deliverable supply estimates, so as to ensure that the underlying market commodity market and available supply sources are able to support the contract sizes and trading units at all times.

(E) *Delivery Pack*. The term “delivery pack” refers to the packaging standards (e.g., product may be delivered in burlap or polyethylene bags stacked on wooden pallets) or non-quality related standards regarding the composition of commodity within a delivery unit (e.g., product must all be imported from the same country or origin). An acceptable specification of the delivery pack or composition of a contract’s delivery unit should reflect, to the extent possible, specifications commonly applied to the commodity traded or transacted in the cash market.

(F) *Delivery Instrument*. An acceptable specification of the delivery instrument (e.g., warehouse receipt, depository certificate or receipt, shipping certificate, bill of lading, in-line transfer, book transfer of securities, etc.) would provide for its conversion into the cash commodity at a commercially-reasonable cost. Transportation terms (e.g., FOB, CIF, freight prepaid to destination) as well as any limits on storage or certificate daily premium fees should be specified. These terms should reflect cash market practices and the customary provision for allocating delivery costs between buyer and seller.

(G) *Inspection Provisions*. Any inspection/certification procedures for verifying compliance with quality requirements or any other related delivery requirements (e.g., discounts relating to the age of the commodity, etc.) should be specified in the contract rules. An acceptable specification of inspection procedures would include the establishment of formal procedures that are consistent with procedures used in the cash market. To the extent that formal inspection procedures are not used in the cash market, an acceptable specification would contain provisions that assure accuracy in assessing the commodity, that are available at a low cost, that do not pose an obstacle to delivery on the contract and that are performed by a reputable, disinterested third party or by qualified designated contract market employees. Inspection terms also should detail which party pays for the service, particularly in light of the possibility of varying inspection results.

(H) *Delivery (Trading) Months*. Delivery months should be established based on the risk management needs of commercial entities as well as the availability of deliverable supplies in the specified months.

(I) *Minimum Price Fluctuation (Minimum Tick)*. The minimum price increment (tick) should be set at a level that is equal to, or less than, the minimum price increment commonly observed in cash market transactions for the underlying commodity. Specifying a futures’ minimum tick that is greater than the minimum price increment in the cash market can undermine the risk management utility of the futures contract by preventing hedgers from efficiently estab-

lishing and liquidating futures positions that are used to hedge anticipated cash market transactions or cash market positions.

(J) *Maximum Price Fluctuation Limits*. Designated contract markets may adopt price limits to: (1) Reduce or constrain price movements in a trading day that may not be reflective of true market conditions but might be caused by traders overreacting to news; (2) Allow additional time for the collection of margins in times of large price movements; and (3) Provide a “cooling-off” period for futures market participants to respond to bona fide changes in market supply and demand fundamentals that would lead to large cash and futures price changes. If price limit provisions are adopted, the limits should be set at levels that are not overly restrictive in relation to price movements in the cash market for the commodity underlying the futures contract.

(K) *Speculative Limits*. Specific information regarding the establishment of speculative position limits are set forth in part 150, and/or part 151, as applicable, of the Commission’s regulations.

(L) *Reportable Levels*. Refer to §15.03 of the Commission’s regulations.

(M) *Trading Hours*. Should be set by the designated contract market to delineate each trading day.

(c) *Futures Contracts Settled by Cash Settlement*. (1) Cash settlement is a method of settling certain futures or option contracts whereby, at contract expiration, the contract is settled by cash payment in lieu of physical delivery of the commodity or instrument underlying the contract. An acceptable specification of the cash settlement price for commodity futures and option contracts would include rules that fully describe the essential economic characteristics of the underlying commodity (e.g., grade, quality, weight, class, growth, issuer, maturity, source, rating, description of the underlying index and index’s calculation methodology, etc.), as well as how the final settlement price is calculated. In addition, the rules should clearly specify the trading months and hours of trading, the last trading day, contract size, minimum price change (tick size) and any limitations on price movements (e.g., price limits or trading halts).

(2) Cash settled contracts may be susceptible to manipulation or price distortion. In evaluating the susceptibility of a cash-settled contract to manipulation, a designated contract market should consider the size and liquidity of the cash market that underlies the listed contract in a manner that follows the determination of deliverable supply as noted above in (b)(1). In particular, situations susceptible to manipulation include those in which the volume of cash market

transactions and/or the number of participants contacted in determining the cash-settlement price are very low. Cash-settled contracts may create an incentive to manipulate or artificially influence the data from which the cash-settlement price is derived or to exert undue influence on the cash-settlement price's computation in order to profit on a futures position in that commodity. The utility of a cash-settled contract for risk management and price discovery would be significantly impaired if the cash settlement price is not a reliable or robust indicator of the value of the underlying commodity or instrument. Accordingly, careful consideration should be given to the potential for manipulation or distortion of the cash settlement price, as well as the reliability of that price as an indicator of cash market values. Appropriate consideration also should be given to the commercial acceptability, public availability, and timeliness of the price series that is used to calculate the cash settlement price. Documentation demonstrating that the settlement price index is a reliable indicator of market values and conditions and is commonly used as a reference index by industry/market agents should be provided. Such documentation may take on various forms, including carefully documented interview results with knowledgeable agents.

(3) Where an independent, private-sector third party calculates the cash settlement price series, a designated contract market should consider the need for a licensing agreement that will ensure the designated contract market's rights to the use of the price series to settle the listed contract.

(i) Where an independent, private-sector third party calculates the cash settlement price series, the designated contract market should verify that the third party utilizes business practices that minimize the opportunity or incentive to manipulate the cash-settlement price series. Such safeguards may include lock-downs, prohibitions against derivatives trading by employees, or public dissemination of the names of sources and the price quotes they provide. Because a cash-settled contract may create an incentive to manipulate or artificially influence the underlying market from which the cash-settlement price is derived or to exert undue influence on the cash-settlement computation in order to profit on a futures position in that commodity, a designated contract market should, whenever practicable, enter into an information-sharing agreement with the third-party provider which would enable the designated contract market to better detect and prevent manipulative behavior.

(ii) Where a designated contract market itself generates the cash settlement price series, the designated contract market should establish calculation procedures that safeguard against potential attempts to artificially influence the price. For example, if

the cash settlement price is derived by the designated contract market based on a survey of cash market sources, the designated contract market should maintain a list of such entities which all should be reputable sources with knowledge of the cash market. In addition, the sample of sources polled should be representative of the cash market, and the poll should be conducted at a time when trading in the cash market is active.

(iii) The cash-settlement calculation should involve computational procedures that eliminate or reduce the impact of potentially unrepresentative data.

(iv) The cash settlement price should be an accurate and reliable indicator of prices in the underlying cash market. The cash settlement price also should be acceptable to commercial users of the commodity contract. The registered entity should fully document that the settlement price is accurate, reliable, highly regarded by industry/market agents, and fully reflects the economic and commercial conditions of the relevant designated contract market.

(v) To the extent possible, the cash settlement price should be based on cash price series that are publicly available and available on a timely basis for purposes of calculating the cash settlement price at the expiration of a commodity contract. A designated contract market should make the final cash settlement price and any other supporting information that is appropriate for release to the public, available to the public when cash settlement is accomplished by the derivatives clearing organization. If the cash settlement price is based on cash prices that are obtained from non-public sources (e.g., cash market surveys conducted by the designated contract market or by third parties on behalf of the designated contract market), a designated contract market should make available to the public as soon as possible after a contract month's expiration the final cash settlement price as well as any other supporting information that is appropriate or feasible to make available to the public.

(4) Contract terms and conditions requirements for futures contracts settled by cash settlement.

(i) An acceptable specification of the terms and conditions of a cash-settled commodity contract will also set forth the trading months, last trading day, contract size, minimum price change (tick size) and daily price limits, if any.

(A) *Commodity Characteristics*: The terms and conditions of a commodity contract should describe the commodity underlying the contract.

(B) *Contract Size and Trading Unit*: An acceptable specification of the trading unit would be a contract size that is consistent with customary transactions in the cash market. A designated contract market may

opt to set the contract size smaller than that of standard cash market transactions.

(C) *Cash Settlement Procedure*: The cash settlement price should be reliable, acceptable, publicly available, and reported in a timely manner as described in paragraphs (c)(3)(iv) and (c)(3)(v) of this appendix C.

(D) *Pricing Basis and Minimum Price Fluctuation (Minimum Tick)*: The minimum price increment (tick) should be set a level that is equal to, or less than, the minimum price increment commonly observed in cash market transactions for the underlying commodity. Specifying a futures' minimum tick that is greater than the minimum price increment in the cash market can undermine the risk management utility of the futures contract by preventing hedgers from efficiently establishing and liquidating futures positions that are used to hedge anticipated cash market transactions or cash market positions.

(E) *Maximum Price Fluctuation Limits*: Designated contract markets may adopt price limits to: (1) Reduce or constrain price movements in a trading day that may not be reflective of true market conditions but might be caused by traders overreacting to news; (2) Allow additional time for the collection of margins in times of large price movements; and (3) Provide a "cooling-off" period for futures market participants to respond to bona fide changes in market supply and demand fundamentals that would lead to large cash and futures price changes. If price-limit provisions are adopted, the limits should be set at levels that are not overly restrictive in relation to price movements in the cash market for the commodity underlying the futures contract. For broad-based stock index futures contracts, rules should be adopted that coordinate with New York Stock Exchange ("NYSE") declared Circuit Breaker Trading Halts (or other market coordinated Circuit Breaker mechanism) and would recommence trading in the futures contract only after trading in the majority of the stocks underlying the index has recommenced.

(F) *Last Trading Day*: Specification of the last trading day for expiring contracts should be established such that it occurs before publication of the underlying third-party price index or determination of the final settlement price. If the designated contract market chooses to allow trading to occur through the determination of the final settlement price, then the designated contract market should show that futures trading would not distort the final settlement price calculation.

(G) *Trading Months*: Trading months should be established based on the risk management needs of commercial entities as well as the availability of price and other data needed to calculate the cash settlement price in the specified months. Specification of the last trading day should take into consideration

whether the volume of transactions underlying the cash settlement price would be unduly limited by occurrence of holidays or traditional holiday periods in the cash market. Moreover, a contract should not be listed past the date for which the designated contract market has access to use a proprietary price index for cash settlement.

(H) *Speculative Limits*: Specific rules and policies for speculative position limits are set forth in part 150 and/or part 151, as applicable, of the Commission's regulations.

(I) *Reportable Levels*: Refer to §15.03 of the Commission's regulations.

(J) *Trading Hours*: Should be set by the designated contract market to delineate each trading day.

(d) *Options on a Futures Contract*. (1) The Commission's experience with the oversight of trading in futures option contracts indicates that most of the terms and conditions associated with such trading do not raise any regulatory concerns or issues. The Commission has found that the following terms do not affect an option contract's susceptibility to manipulation or its utility for risk management. Thus, the Commission believes that, in most cases, any specification of the following terms would be acceptable; the only requirement is that such terms be specified in an automatic and objective manner in the option contract's rules:

- Exercise method;
- Exercise procedure (if positions in the underlying futures contract are established via book entry);
- Strike price listing provisions, including provisions for listing strike prices on a discretionary basis;
- Strike price intervals;
- Automatic exercise provisions;
- Contract size (unless not set equal to the size of the underlying futures contract); and
- Option minimum tick should be equal to or smaller than that of the underlying futures contract.

(2) *Option Expiration & Last Trading Day*. For options on futures contracts, specification of expiration dates should consider the relationship of the option expiration date to the delivery period for the underlying futures contract. In particular, an assessment should be made of liquidity in the underlying futures market to assure that any futures contracts acquired through exercise can be liquidated without adversely affecting the orderly liquidation of futures positions or increasing the underlying futures contract's susceptibility to manipulation. When the underlying futures contract exhibits a very low trading activity during an expiring delivery month's final trading days or has a greater risk of price manipulation than other contracts, the last trading day and expiration day of the option should occur prior to the delivery period or the settlement date of the underlying future. For example, the last

trading day and option expiration day might appropriately be established prior to first delivery notice day for option contracts with underlying futures contracts that have very limited deliverable supplies. Similarly, if the futures contract underlying an option contract is cash settled using cash prices from a very limited number of underlying cash market transactions, the last trading and option expiration days for the option contract might appropriately be established prior to the last trading day for the futures contract.

(3) *Speculative Limits.* In cases where the terms of an underlying futures contract specify a spot-month speculative position limit and the option contract expires during, or at the close of, the futures contract's delivery period, the option contract should include a spot-month speculative position limit provision that requires traders to combine their futures and option position and be subject to the limit established for the futures contract. Specific rules and policies for speculative position limits are set forth in part 150 and/or part 151, as applicable, of the Commission's regulations.

(4) *Options on Physicals Contracts.*

(i) Under the Commission's regulations, the term "option on physicals" refers to option contracts that do not provide for exercise into an underlying futures contract. Upon exercise, options on physicals can be settled via physical delivery of the underlying commodity or by a cash payment. Thus, options on physicals raise many of the same issues associated with trading in futures contracts regarding adequacy of deliverable supplies or acceptability of the cash settlement price series. In this regard, an option that is cash settled based on the settlement price of a futures contract would be considered an "option on physicals" and the futures settlement price would be considered the cash price series.

(ii) In view of the above, acceptable practices for the terms and conditions of options on physicals contracts include, as appropriate, those practices set forth above for physical-delivery or cash-settled futures contracts plus the practices set forth for options on futures contracts.

(e) *Security Futures Products.* The listing of security futures products are governed by the special requirements of part 41 of the Commission's regulations.

(f) *Non-Price Based Futures Contracts.* (1) Non-price based contracts are typically construed as binary options, but also may be designed to function similar to traditional futures or option contracts.

(2) Where the contract is settled to a third party cash-settlement series, the designated contract market should consider the nature and sources of the data comprising the cash-settlement calculation, the computational procedures, and the mechanisms in place to ensure the accuracy and reliability of the

index value. The evaluation also considers the extent to which the third party has, or will adopt, safeguards against unauthorized or premature release of the index value itself or any key data used in deriving the index value.

(3) The designated contract market should follow the guidance in paragraph (c)(4) (Contract Terms and Conditions Requirements for Futures Contracts Settled by Cash Settlement) of this appendix C to meet compliance.

(g) *Swap Contracts.* (1) In general, swap contracts are an agreement to exchange a series of cash flows over a period of time based on reference price indices. When listing a swap for trading, a swap execution facility or designated contract market should determine that the reference price indices used for its contracts are not readily susceptible to manipulation. Accordingly, careful consideration should be given to the potential for manipulation or distortion of the cash settlement price, as well as the reliability of that price as an indicator of cash market values. Appropriate consideration also should be given to the commercial acceptability, public availability, and timeliness of the price series that is used to calculate the cash settlement price. Documentation demonstrating that the settlement price index is a reliable indicator of market values and conditions and is highly regarded by industry/market agents should be provided. Such documentation may take on various forms, including carefully documented interviews with principal market trading agents, pricing experts, marketing agents, etc. Appropriate consideration also should be given to the commercial acceptability, public availability, and timeliness of the price series that is used to calculate the cash flows of the swap.

(i) Where an independent, private-sector third party calculates the referenced price index, the designated contract market should verify that the third party utilizes business practices that minimize the opportunity or incentive to manipulate the cash-settlement price series. Such safeguards may include lock-downs, prohibitions against derivatives trading by employees, or public dissemination of the names of sources and the price quotes they provide. Because a cash-settled contract may create an incentive to manipulate or artificially influence the underlying market from which the cash-settlement price is derived or to exert undue influence on the cash-settlement computation in order to profit on a futures position in that commodity, a designated contract market should, whenever practicable, enter into an information-sharing agreement with the third-party provider which would enable the designated contract market to better detect and prevent manipulative behavior.

(ii) Where a designated contract market itself generates the cash settlement price series, the designated contract market should establish calculation procedures that safeguard against potential attempts to artificially influence the price. For example, if the cash settlement price is derived by the designated contract market based on a survey of cash market sources, the designated contract market should maintain a list of such entities which all should be reputable sources with knowledge of the cash market. In addition, the sample of sources polled should be representative of the cash market, and the poll should be conducted at a time when trading in the cash market is active.

(iii) The cash-settlement calculation should involve appropriate computational procedures that eliminate or reduce the impact of potentially unrepresentative data.

(2) *Speculative Limits:* Specific rules and policies for speculative position limits are set forth in part 151 and/or part 151, as applicable, of the Commission's regulations.

(3) *Intraday Market Restrictions:* Designated contract markets or swap execution facilities should have in place intraday market restrictions that pause or halt trading in the event of extraordinary price moves that may result in distorted prices. Such restrictions need to be coordinated with other markets that may be a proxy or a substitute for the contracts traded on their facility. For example, coordination with NYSE rule 80.B Circuit Breaker Trading Halts. The designated contract market or swap execution facility should adopt rules to specifically address who is authorized to declare an emergency; how the designated contract market or swap execution facility will notify the Commission of its decision that an emergency exists; how it will address conflicts of interest in the exercise of emergency authority; and how it will coordinate trading halts with markets that trade the underlying price reference index or product.

(4) *Settlement Method.* The designated contract market or swap execution facility should follow the guidance in paragraph (c)(4) (Contract Terms and Conditions Requirements for Futures Contracts Settled by Cash Settlement) of this appendix C to meet compliance, or paragraph (b)(2) (Contract Terms and Conditions Requirements for Futures Contracts Settled by Physical Delivery) of this appendix C, as appropriate.

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## PART 39—DERIVATIVES CLEARING ORGANIZATIONS

### Subpart A—General Provisions Applicable to Derivatives Clearing Organizations

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### Subpart C—Provisions Applicable to Systemically Important Derivatives Clearing Organizations and Derivatives Clearing Organizations That Elect To Be Subject to the Provisions of This Subpart

- 39.30 Scope.
- 39.31 Election to become subject to the provisions of this subpart.
- 39.32 Governance for systemically important derivatives clearing organizations and subpart C derivatives clearing organizations.
- 39.33 Financial resources for systemically important derivatives clearing organizations and subpart C derivatives clearing organizations.
- 39.34 System safeguards for systemically important derivatives clearing organizations and subpart C derivatives clearing organizations.